PROGRESS OF THE LAW.

As Marked by Decisions selected from the Advance Reports for October.

Edited by Ardemus Stewart.

Attachment

The Supreme Court of Ohio has recently decided that in a civil action for the recovery of money the plaintiff may, on the ground that the defendant is a non-resident of the state, have an attachment against the property of a defendant partnership, all the members of which reside out of the state, though it was formed for the purpose of carrying on business in the state, and has a usual place of doing business therein: *Byers* v. *Schlupe*, 38 N. E. Rep. 117.

Bills of Exchange

The Court of Appeals of England has lately held that, inasmuch as the acceptor of a bill of exchange has the full three days of grace in which to pay it, when payment is refused by the acceptor at any time of the last day of grace, the holder, though at once entitled to give notice of dishonor to the drawer and indorser, has no cause of action against either the acceptor or the other parties to the bill until the expiration of that day, because the acceptor may repent before it expires; and that an action brought by the holder against the acceptor on the last day of grace must be dismissed as premature: *Kennedy* v. *Thomas*, [1894] 2 Q. B. 759. This seems at variance with the decision of the Supreme Court of Idaho in *Sabin* v. *Burke*, 37 Pac. Rep. 352, noticed in 1 Am. L. Reg. & Rev. (N. S.) 758.

The courts are now full of the echoes of the great railroad insurrection, and never, perhaps, has the strike question been legally reviewed in so many of its protean aspects. The Circuit Court for the Southern District of California in *So. Cal. Ry.* v. *Rutherford*, 62 Fed. Rep. 796, had occasion, to pass upon one very interesting phase of the problem; and held that, when employés of a railroad, though staying in its service, refuse to operate trains hauling certain cars (in this case Pullmans), though the company is bound by contract to carry them, thus interrupting interstate commerce and the transmission of the mails, and subjecting the company to suits and great and irreparable damage, an injunction will issue to compel them to perform their duties while they remain in the service of the company. This is in full harmony with the case of the *Toledo A. A. & N. M. Ry. Co.* v. *Penna. Co.*, 54 Fed. Rep. 746; but such an interference with the putative right of every one to do as he pleases, irrespective of the legal rights of others, will assuredly rouse the ire of our congressional demagogues.

Boycotts

The constantly varying circumstances which affect the relations of common carriers to the public and to each other, never fail to give new aspects to those relations. The Supreme Court of Tennessee has just decided a case which seems to be one of first impression: *Stewart* v. *Gracey*, 27 S. W. Rep. 664, in which it ruled, that the mere delivery of warehouse receipts to a common carrier, with an order for delivery of the goods, but without a bill of lading, is not a constructive delivery of the goods, so as to render the carrier liable in case the goods are burned in the warehouse before it can remove them, though it entered the receipt on its books, and has commenced to remove the goods. LEA and CALDWELL, JJ., dissented, however, and the opposite doctrine would seem to have much to recommend it. Granting that the mere delivery of the warehouse receipts to the carrier would impose no duty on it, if it remained passive, its acts in this case would seem to amount to an acceptance of the goods

Carriers, Delivery of Goods

for the purpose of carriage; and there cannot well be an acceptance without a previous delivery.

Liability for Deviation from Route

The Court of Civil Appeals of Texas has lately held, that a deviation from the stipulated route, in order to avoid delay, because it is impossible to follow the regular route on account of floods, does not render the carrier an insurer, and therefore liable for the delay that may be caused by such deviation: *International & G. N. R. Co.* v. *Wentworth*, 27 S. W. Rep. 680. This doctrine is a just one, especially in view of the fact that when the carrier undertakes the shipment of perishable goods (such as live stock), and their transportation is delayed by an obstruction on the main line, such as a washout, but the railroad has a way around the obstruction, by which delay could be avoided, the company will be liable to the shipper for any damages caused by delay, if that way is not followed: *Receivers of Mo., K. & T. Ry. Co.* v. *Olive*, (Tex.), 23 S. W. Rep. 526. But if the carrier knows at the time of its undertaking to transport the goods that part of its route is obstructed by floods, the existence of such floods is not such an act of God as will relieve it from liability for injuries to the goods while carried on another route: *Adams Exp. Co.* v. *Jackson*, (Tenn.), 21 S. W. Rep. 666. It is true, however, that by a wilful deviation from an agreed route, not caused by stress of unavoidable circumstances, the carrier becomes an insurer, and cannot invoke the benefit of any exceptions in its behalf in the contract of carriage: *Robertson* v. *Nat'l S. S. Co., Ltd.*, 17 N. Y. Suppl. 459.

Limitation of Liability

According to the Supreme Judicial Court of Maine, in *Rogers* v. *Kennebec Steamboat Co.*, 29 Atl. Rep. 1069, one who accepts and uses a free pass, as a pure gratuity, on condition that he will assume all risk of personal injury, must be deemed to have accepted it on that condition, whether he reads it or not; such a contract is not against public policy, and will exonerate the carrier from all liability for the negligence of its servants. This case was decided on the authority of *Quimby* v. *Boston & Me. R. R.*, 150 Mass. 365; S. C., 23 N. E. Rep. 205, and *Griswold* v. *N. Y. & N. E. R. R.*, 53 Conn. 371; S. C., 4 Atl. Rep. 261.

The rule is a fair one, for such a passenger is a mere licensee, to whom the company owes no duty; but it has been extended rather unwarrantably, to the case of a drover or other shipper of goods, who attends them in order to care for his property while in transit: *McCawley* v. *Furness Ry. Co.*, 8 L. R. Q. B. 57; *Poncher* v. *N. Y. Cent. R. R.*, 49 N. Y. 263. This is denied, however, by the courts of other states and by the federal courts: *Pa. R. R.* v. *Henderson*, 51 Pa. 315; *Cleveland, &c., R. R.* v. *Curran*, 19 Ohio, 1; *R. R.* v. *Lockwood*, 17 Wall. 357; *Ry. Co.* v. *Stevens*, 95 U. S. 655; with good reason, for the shipper certainly gives some consideration for his pass, by relieving the carrier, to a certain extent, of the care of his goods. The general rule also extends to the case of a street car passenger, riding on a pass: *Muldoon* v. *Seattle City Ry. Co.*, 7 Wash. 528; S. C., 35 Pac. Rep. 422. It does not apply, however, to the case of a government mail clerk: *Seyboldt* v. *N. Y., L. E. & W. R. R.*, 95 N. Y. 562; and some courts deny its validity *in toto*: *G. C. & S. F. Ry. Co.* v. *McGown*, 65 Tex. 640.

Conflict of Jurisdiction

The Circuit Court for the Western District of North Carolina has decided, in *Porter* v. *Davidson*, 62 Fed. Rep. 626, that property in possession of a sheriff under process issued by a state court, cannot be taken out of his possession in an action of claim and delivery instituted in a federal court.

Constitutional Law

In the opinion of the Supreme Court of New York, a city ordinance which provides that if a dog attacks a person, a police justice may, on complaint made, order the owner to kill the dog immediately, and impose a fine for failure to obey the order, but which does not require that notice and opportunity to be heard be given the owner, is void, as depriving of property without due process of law, since dogs are property in New York: *Peo.* v. *Tighe*, 30 N. Y. Suppl. 368.

The Supreme Court of Oklahoma has just decided, in *Burke*

v. *Territory*, 37 Pac. Rep. 829, that the power to punish for contempt is inherent in all courts of record; that the legislature has no power, in the absence of constitutional restrictions, to limit or regulate the inherent power of the courts to punish for contempt; and that a publication made while a matter is pending in court, charging directly that the action of the court in regard to that matter is an effort to browbeat the grand jury; an effort to bend the grand jury to the will of the judge; is a contempt. This is in full accord with the general rule on the subject, that "when a publication in a newspaper, being read by jurors and attendants in courts, would have a tendency to interfere with the proper and unbiassed administration of the laws in pending cases, it may be adjudged a contempt and punished accordingly:" *State* v. *Judge of Civil District Court*, 45 La. An. 1250; S. C., 14 So. Rep. 310. This subject is fully treated in an annotation in 32 AM. L. REG. & REV. 1046, on the case of *Peo.* v. *Stapleton*, 18 Colo. 568; S. C., 33 Pac. Rep. 167. See also *State* v. *Waugh*, (Kans.), 37 Pac. Rep. 165.

Contempt

The Supreme Court of Pennsylvania has lately held that an agreement by a grandfather to pay his daughter $20,000, and her son $10,000 when he comes of age, if she will permit the son to live with him, and be educated by him, she to see him whenever she desires, is not void as against public policy: *Enders* v. *Enders*, 30 Atl. Rep. 129.

Contracts, Public Policy

The Court of Civil Appeals of Texas has carved out an interesting exception to the general rule in regard to contracts in restraint of trade, by ruling, in *Anheuser-Busch Brewing Ass'n* v. *Houck*, 27 S. W. Rep. 692, (1) that a combination of persons and firms in a city for the control of the sale of beer and the cessation of competition *inter se*, is not void at common law as against public policy, although in restraint of trade, since beer is not an article of prime necessity, and its sale is closely restricted by public policy; and (2) that a contract by a brewing association to furnish beer to a dealer in a city in bulk, and not to furnish it in bulk "to any other party" in said city, for one year, is not

Restraint of Trade

void as against public policy and in restraint of trade, so as to prevent a recovery for beer sold thereunder.

The reasoning by which the first branch of the above decision is supported, sufficiently exposes the flimsiness of the argument by which the Supreme Court of Pennsylvania sought to bolster up its decision in the case of *Nester* v. *Continental Brewing Co.*, 161 Pa. 473; S. C., 34 W. N. C. 387; 29 Atl. Rep. 102, if, indeed, that flimsiness is not so patent as to require no effort to point it out. It is difficult to speak seriously of a decision which compares beer to breadstuffs, and speaks of a combination to restrain its sale as being injurious to the public interests. There never was a clearer case of sticking in the bark. There is an excellent annotation on the Nester Case, by G. Herbert Jenkins, in 1 AM. L. REG. & REV. (N. S.) 639.

So far as the second branch of the decision is concerned, it rests on substantially the same grounds as the first; but is liable to be affected by a greater variety of considerations, as was the case, for instance, in *Niagara Falls Brewing Co.* v. *Wall*, (Mich.), 57 N. W. Rep. 99, where it was held that a retail liquor dealer, who has failed to pay a state license tax, and is actually engaged in illegal traffic, cannot recover from a brewing company for its breach of a contract to sell its beer exclusively to him in a designated town.

Copyright

The Circuit Court for the District of Massachusetts has ruled, in *Littleton* v. *Ditson*, 62 Fed. Rep. 597, that the proviso in § 3 of the Copyright Act of March 31, 1891, that, "in the case of a book, photograph, chromo, or lithograph," the two copies required to be delivered to the Librarian of Congress shall be manufactured in this country, does not include musical compositions published in book form, or made by lithographic process.

Corporations

The Supreme Court of Tennessee has lately decided that the liability of the directors of a corporation, under a charter providing that if the corporate indebtedness shall exceed the capital stock paid in, the directors assenting thereto shall be individually liable for such excess,

is solely for such excess of indebtedness, and to all the creditors of the corporation; and that, therefore, a portion only of the latter cannot maintain an action for their individual debts *Moulton* v. *Cornell-Hall-McLester Co.*, 27 S. W. Rep. 672. Truly, a curious doctrine!

The Supreme Court of Indiana has recently passed upon a very interesting question of criminal law, in *Beasley* v. *State*, 38 N. E. Rep. 35, in which case it held that when a husband takes the personal property of his wife, under circumstances which would constitute larceny if he were a third person, he is guilty of that offence. This is correct beyond a doubt, in the present state of the laws relating to the property of married women; but imagine the sensations of the sages of the common law, if such a doctrine had been propounded to them. The same has been held with regard to arson: *Garrett* v. *State*, 109 Ind. 527; S. C., 10 N. E. Rep. 570. See, however, *Snyder* v. *Peo.*, 26 Mich. 106.

Criminal Law
Husband and Wife

In the judgment of the Queen's Bench Division of England, as given in *Queen* v. *Silverlock*, [1894] 2 Q. B. 766, a count in an indictment for obtaining a check by false pretences, which charges that the defendant, by causing a fraudulent advertisement to be inserted in a newspaper, did falsely pretend to the subjects of her Majesty the Queen, that . . . by means of which last mentioned false pretence he obtained from A. a check, was sufficient, though it did not allege the false pretence to have been made to any particular person.

Pleading, False Pretences

According to the Supreme Court of Alabama, detinue lies by a vendee of oxen delivered to him under an executed contract of sale, but afterwards wrongfully seized by the vendor: *Barnhill* v. *Howard*, 16 So. Rep. 1.

Detinue

The Supreme Court of New York maintains, that a threat

Duress

by the widow of a decedent that she will take his body to a certain place for burial, unless his mother assigns a policy on decedent's life to her, is not such duress as will vitiate the assignment: *Jewelers' League of City of New York* v. *De Forest*, 30 N. Y. Suppl. 88.

Easements, Ways of Necessity

The Supreme Judicial Court of Massachusetts has lately ruled, that when one conveys to a railroad company a right of way through his land, so as to cut off access to a part thereof, he has a right of way of necessity over the land conveyed: *N. Y. & N. E. R. Co.* v. *Board of R. R. Comrs.*, 38 N. E. Rep. 27; but the Supreme Judicial Court of Maine has held, that no right of way from necessity exists across the remaining land of a grantor, when the land to which such right of way is claimed is surrounded on three sides by the sea: *Kingsley* v. *Goulds-borough Land Imp. Co.*, 29 Atl. Rep. 1074. The same has been held in the case of a grant of an island: *Lawton* v. *Rivers*, 2 McCord (S. C.), 445; *Turnbull* v. *Rivers*, 3 McCord (S. C.), 131.

Evidence, Dying Declarations

The Supreme Court of Alabama, in *Johnson* v. *State*, 16 So. Rep. 99, reasserts the principle of evidence, abundantly supported by the cases cited, that when a declaration of the deceased, made when he is not in fear of immediate death, is subsequently reaffirmed by him when he believes death to be imminent, or "in the consciousness of impending dissolution," it is admissible as a dying declaration, though not re-read to him at the time of reaffirmance. The same doctrine was held in *Peo.* v. *Crews*, (Cal.), 36 Pac. Rep. 367. Of course, if the declaration is read over to the deceased before its reaffirmance, there is no doubt as to its admissibility: *Million* v. *Com.*, (Ky.), 25 S. W. Rep. 1059.

Photographs

The Supreme Judicial Court of Massachusetts has recently decided, that photographs, taken three hours after the commission of a homicide, showing the condition of the premises on the discovery of the crime, and satisfactorily verified, are admissible, though the killing be admitted,

as they may naturally be expected to aid the jury in understanding the situation of affairs at the time and place of the commission of the crime: *Com.* v. *Robertson*, 38 N. E. Rep. 25.

Extradition

The Supreme Court of New York, following the *Rauscher Case*, 119 U. S. 407, holds that under the extradition treaty between the United States and Great Britain, a person extradited from England for assault with intent to murder, cannot be convicted of assault with intent to do great bodily harm. The judge who delivered the opinion (on *habeas corpus*, at special term) expressly declined to pass upon the question as to the effect of a conviction of a less crime involved in that upon the accusation of which extradition was had, on the ground that under the New York statute the latter crime was not included in the former, and that, therefore, that question did not enter into the case. He declined to discharge the prisoner, however, and remanded him to await the decision of the general term on the legality of the conviction: *Peo.* v. *Hannan*, 30 N. Y. Suppl. 370. It is to be hoped that that decision will be against the prisoner, in order that the questionable decision in the Rauscher case may have a thorough re-examination, and, if possible, a reversal. See remarks upon this case in an article entitled, "The Right to Try an Extradited Criminal for an Offence other than that Specified in the Extradition Proceedings," in 28 Am. L. Rev. 568.

Political Offences

Judge Morrow, of the District Court for the Northern District of California, has recently held, in the case of the Salvadorian fugitives, *In re Ezeta, &c.*, 62 Fed. Rep. 964, that the jurisdiction of a judge, sitting as a committing magistrate in a case in which fugitives are charged with extraditable crimes, is in no way affected by, and he will not inquire into, the manner in which the persons so charged came or were brought into the United States; and in *In re Ezeta, &c.*, 62 Fed. Rep. 972, that the committing magistrate has jurisdiction, and it is his duty, to determine whether the offence charged is political, and not subject to extradition; that offences committed by officers of the party in possession of

the government, during the progress of an attempted revolution, and the existence of active hostilities between the contending parties, are political, and not extraditable; and that offences within the jurisdiction of military law, which for the time being supersedes the common law, are not extraditable.

Fraud, Rescission

The Court of Civil Appeals of Texas has ruled in *Simmang* v. *Harris*, 27 S. W. Rep. 786, that a sale of land will not be rescinded on the ground of fraud merely because the grantor, in the abstract of title furnished the vendee before the sale, omitted a portion of a will, which is claimed to restrict the title of the grantor to a life estate, when the will is on record, and the construction of the part omitted involves a technical knowledge of the law.

Game

The Supreme Court of Minnesota has ranged itself on the side of those who claim that the laws forbidding the possession of game out of season apply to game killed lawfully, either in the state of sale, and kept in storage, or imported from a state having a different close season: *State* v. *Rodman*, 59 N. W. Rep. 1098. The cases on this subject are collected in 1 AM. L. REG. & REV. (N. S.) 751.

Garnishment

The Supreme Court of Alabama has very properly decided in a recent case, that when a police officer illegally arrests a person, and takes possession of his money and effects, these are not subject to garnishment in the hands of such officer by a creditor of the person arrested, there being no contractual relation between the officer and such person: *Cunningham* v. *Baker*, 16 So. Rep. 68; and the Supreme Court of Georgia has ruled, that a "commercial traveller," whose business it is to travel and sell goods for his employer, though employed and paid for his services by the day, is not a "day laborer," and his wages are not therefore exempt from garnishment under Ga. Code, § 3554.

In the opinion of the Supreme Court of Iowa, when two

Homicide

persons are charged in the same indictment with murder in the first degree, the conviction of one of murder in the second degree will not prevent the trial of the other for the crime as charged in the indictment: *State* v. *Lee*, 60 N. W. Rep. 119.

Insurance

In the opinion of the Supreme Court of Missouri, as expressed in *Havens* v. *Germania Fire Ins. Co.*, 27 S. W. Rep. 718, the words "wholly destroyed," used in reference to a building, in either a statute or an insurance policy, must be taken to mean that the building is totally destroyed, as such, though there is not an absolute extinction of all its parts, and that a building is none the less "wholly destroyed" because part of the machinery had been removed therefrom pending repairs, and stored in another building, not exposed to the fire.

There is a very valuable article on the effect of these words, in relation to insurance, by M. C. Phillips, Esq., in 33 Cent. L. J. 319.

Interstate Rendition

The Supreme Court of Alabama, following the decision of the Supreme Court of the United States in *Lascelles* v. *Georgia*, 148 U. S. 537; S. C., 13 Sup. Ct. Rep. 687, has lately reaffirmed the rule that a person extradited from another state of the Union may be tried on a charge other than that on which he was extradited, without first being tried on the latter, or given a chance to return to the state which surrendered him: *Carr* v. *State*, 16 So. Rep. 150, 155. One would have thought that the decision of the Supreme Court would have settled this question finally, especially as it was so thoroughly consonant with principle and with the weight of prior authority. But it seems to be a stock subject of exception in all cases to which it applies, something like the general exception in civil cases, "because the judge failed to charge in favor of the defendant."

The general rule has also been upheld recently in *State* v. *Kealy*, (Iowa), 56 N. W. Rep. 283, on the authority of *State* v. *Ross*, 21 Iowa, 467, a case of kidnapping; a conviction of

petit larceny has been held valid where the defendant was surrendered on a charge of grand larceny: *State* v. *Walker*, (Mo.), 24 S. W. Rep. 1011; and a similar conviction for a less crime was held legal in *Comm.* v. *Johnston*, (Pa.), 2 D. R. 673; S. C., 12 Pa. C. C. 263. It has been ruled, in Minnesota, that the mere fact of interstate rendition will not exempt the defendant from civil prosecution while detained under such proceedings, though, of course, it would be different if the rendition process were a mere contrivance to bring the defendant within the reach of civil process; and that the principle of public policy which exempts a witness or party appearing voluntarily from the service of civil process in such cases, in order to further the ends of justice by encouraging such appearance, does not apply when the presence of the party is compulsory: *Reid* v. *Ham*, 56 N. W. Rep. 35; S. C., 54 Minn. 305. The cases on the subject will be found collected in an article on this and kindred subjects, in 28 Am. L. Rev. 568.

Judge, Disqualification

Both the Supreme Court of Texas and the Court of Civil Appeals of the same state agree, that a judge is not disqualified from hearing a case, merely because his brother, who is attorney for one of the parties, has a contingent interest in the result of the suit, due to his having agreed with his client for a contingent fee: *Winston* v. *Masterson*, 27 S. W. Rep. 691, 768. This is a very sensible view of the matter, much more reasonable than the decision in *Howell* v. *Budd*, 91 Cal. 342; S. C., 27 Pac. Rep. 747, where it was held that the sons of a judge, who agree to try a case for a contingent fee, are parties within the meaning of the statute, sufficient to disqualify their father from trying the case.

There is no affinity between the blood relations of the husband and the blood relations of the wife; and hence the brother of the husband may lawfully preside at the trial of the wife's brother for the commission of a crime: *Exp. Harris*, 26 Fla. 77. A judge, the brother-in-law of a stockholder of a corporation, who is also its president, is not disqualified by that relation to try a suit to which the corporation is a party:

Lewis v. *Hillsboro Roller Mill Co.*, (Tex.), 27 S. W. Rep. 338. So, also, a guardian *ad litem* is not a party to the suit, but an officer of the court; and a surrogate is not disqualified to act on the probate of a will, because his brother has been appointed guardian *ad litem* of an infant party: *In re Van Wagonen's Will*, 69 Hun. 365; S. C., 23 N. Y. Suppl. 636.

Jury

In the opinion of the Supreme Court of Illinois, when jurors, after agreeing on a verdict, and before its return, go into a saloon, and are there treated by lawyers for both sides, such conduct is no cause for a new trial, since both parties are *in pari delicto: McLaughlin* v. *Hinds*, 38 N. E. Rep. 136. *Quære*, as to the effect if one lawyer stood more of the expense than the other, or if one, on the plea of having no money, got the other to stand the whole treat?

Lease, Covenant

The Chancery Division of England has recently decided, that a covenant in a lease that the lessee will not carry on a business similar to that of another tenant of the same lessor, is not violated by maintaining a lunch counter for the sale of tea, coffee, pastry and cold meat, without a license for the sale of intoxicants, while the other tenant carried on a regular licensed restaurant, for the sale of all sorts of eatables and liquors, the former establishment being also much smaller, and the prices considerably lower: *Drew* v. *Guy*, [1894] 3 Ch. 25.

Mandamus, Acceptance of Office

The Supreme Court of New Hampshire has lately passed upon a rather unusual state of affairs, arising from a modesty one does not look for nowadays in a public official. The office of governor of that state had become vacant, and the duty of filling the vacancy devolved upon the president of the Senate, who, however, refused to accept. But the court held that he might be compelled by mandamus to perform the duties of the office: *Barnard* v. *Taggart*, 29 Atl. Rep. 1027. This is in line with the rule which holds that mandamus will lie to compel the acceptance of a municipal office by one who, possessing the necessary

qualifications, has been duly elected thereto: *Peo.* v. *Williams*, (Ill.), 33 N. E. Rep. 849.

Award of Contract

The Supreme Court of Washington holds, in conformity with the general rule, that a municipal corporation will not be compelled by mandamus to award a contract to the lowest bidder for city work, even though such contracts are by law required to be let to the lowest bidder: *Times Pub. Co.* v. *Everett*, 37 Pac. Rep. 695. *A fortiori*, when there is no such statutory obligation, mandamus will not lie: *State* v. *Lincoln Co.*, 35 Neb. 346; S. C., 53 N. W. Rep. 147; *State* v. *Dixon Co.*, 24 Neb. 106; S. C., 37 N. W. Rep. 936.

Master and Servant

According to the judgment of the Circuit Court of Appeals for the Fifth Circuit, in *Texas & P. Ry. Co.* v. *Scoville*, 62 Fed. Rep. 730, the wanton and malicious use of the steam whistle of a locomotive, by servants of a railroad company, who are in charge of the locomotive, while it is in motion on a regular or authorized run, is an act within the scope of their employment, so far as to charge the company with liability for injuries caused thereby.

Minors

The Supreme Court of Errors of Connecticut, in *Gregory* v. *Lee*, 30 Atl. Rep. 53, has ruled, that when a minor contracts for the lease of a room, and leaves after occupying it for part of the period covered by the lease, he cannot be compelled to pay for the remaining time; because, granting that the room was a necessary, the contract therefore was still liable to be rescinded at the election of the minor, and was in fact so rescinded by his ceasing to occupy the room.

Municipal Corporations, Estoppel

The Circuit Court of Appeals for the Eighth Circuit holds, that when a municipal body has lawful authority to issue bonds or other negotiable securities, dependent only upon the adoption of certain preliminary proceedings, and the adoption of those proceedings is certified, on the face of the bonds, by the body to which the law entrusts the power, and upon which it imposes the duty, to ascertain, determine and certify this fact, before or at the time

of issuing the bonds, such a certificate will estop the municipality, as against a *bona fide* purchaser of the bonds, from proving its falsity, in order to defeat them: *Nat. L. Ins. Co. of Montpelier* v. *Board of Education of City of Huron*, 62 Fed. Rep. 778.

Contracts, Injunction

While, as we have seen, the Supreme Court of Washington denies the right of the lowest bidder on a municipal contract to maintain mandamus to compel the award of the contract to him, it acknowledges the fact that if such bidder be a tax-payer, he may sue as such to enjoin the performance of a contract awarded to a higher bidder, though his action is prompted by other considerations than his liability to excessive taxation: *Times Pub. Co.* v. *Everett*, 37 Pac. Rep. 695. This decision is an extension of the doctrine asserted in *Mazet* v. *Pittsburg*, 137 Pa. 548; S. C., 20 Atl. Rep. 693.

Negligence

The Court of Errors and Appeals of Delaware has lately held, that coasting on the streets of a town is a public nuisance, irrespective of an ordinance of the city council declaring it to be such; and that the neglect of the police to abate the nuisance will not render the town liable to one injured by a person coasting, while passing along the street: *Wilmington* v. *Vandegrift*, 29 Atl. Rep. 1047.

Powers, Buildings

The Queen's Bench Division has decided, that a bungalow, constructed of wood and corrugated iron, erected on a piece of land, for the purpose of exhibition and sale, not used or occupied, nor intended to be used or occupied on the spot where erected, is not a wooden structure, or erection of a movable or temporary character, under the English statute, and does not require a license for its erection: *London County Council* v. *Humphreys, Ltd.*, [1894] 2 Q. B. 755.

The Supreme Court of South Dakota has also recently rendered an interesting decision in regard to the powers of municipal corporations over property within their limits, in *City of Sioux Falls* v. *Kelly*, 60 N. W. Rep. 156, to the effect that: (1) A municipal corporation possesses only these powers, viz.: those granted in express terms; those necessarily and fairly implied, or incident to the powers expressly granted;

and those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. (2) The right of a person to exercise dominion over his own property, and to build upon and improve the same, in accordance with the general laws of the land and municipal ordinances applicable alike to all citizens of a city, is secured by the fundamental principles of the constitution; and he cannot be compelled by the municipal government under which he lives to hold that right subject to the power of granting or refusing a permit to build upon or otherwise improve his property, vested in a city building inspector, from whose decision there is no appeal. (3) According to these principles a municipal ordinance, which prescribes that before any person can erect any building, or any addition thereto, within the city limits, he must first apply to and obtain from the city building inspector a permit, to be granted or refused at his pleasure, providing for no appeal from his decision, and subjecting the owner to a penalty in case he builds without such permit, violates the constitutional rights of the citizen, in that it makes the right of the owner of property to improve and use the same dependent upon the decision of the city building inspector, and is therefore void. This, of course, applies only where, as in the present case, there is no express grant of a power to pass such an ordinance. There can be no question as to the ability of the legislature to confer such power.

Negligence

According to the Appellate Court of Indiana, when the public have been accustomed to travel a well-defined road across the land of a private person, though no right of way by user has been acquired, the owner is liable for injuries caused by stretching a barbed wire, not visible after dark, across such way, without anything to warn travellers of its existence: *Morrow* v. *Sweeney*, 38 N. E. Rep. 187. The Supreme Court of Vermont has recently announced a very salutary doctrine, in *Judd* v. *Ballard*, 30 Atl. Rep. 96, to the effect that it is actionable negligence for a person, while adjusting the handle of a loaded revolver, to hold it so that an accidental discharge will injure another;

and that if he does so hold it, he will be liable for any injury that may result.

Nuisance

The decision of the Court of Appeals of England, in *Lemmon* v. *Webb*, [1894] 3 Ch. 1, will prove very interesting to all owners of real estate, but more especially to those whose property is of limited extent. In that case, large boughs of old trees standing on Lemmon's land had for more than twenty years overhung Webb's land; but finally Webb, without giving Lemmon any notice, cut off the boughs to the boundary-line. Lemmon then brought action against Webb, alleging that the latter had no right at all to cut off anything that had overhung his land more than twenty years, and that even if he had the right to cut the branches off, he was not entitled to do so without first giving notice. But the court held that the mere fact that the branches had overhung Webb's land for more than twenty years gave no right to have them remain in that position, and that notice was not necessary, as Webb did not go on Lemmon's land for the purpose of cutting them off.

Partnership

The Supreme Court of Alabama is of opinion that an agreement by which one party is to furnish lumber and market the same when sawed, and the other party is to saw it on halves, makes a partnership: *Lee* v. *Ryan*, 16 So. Rep. 2.

Assets

The Chancery Division holds, that when an action is pending for the dissolution of a partnership, on the ground that the defendant partner is of unsound mind, the court will grant an injunction to restrain the defendant from interfering in the conduct of the partnership affairs, so as to injure the business and assets of the firm: *J.* v. *S.*, [1894] 3 Ch. 72.

Pledge

Following the weight of authority, the Court of Civil Appeals of Texas has recently decided, that when stock in a corporation has been pledged, and the shares transferred on the books to the pledgee, a bill in equity will lie to redeem the stock upon the refusal of the

pledgee to retransfer it; because the legal title being vested in the pledgee by the transfer, the pledgor has no other remedy: *Smith* v. *Anderson*, 27 S. W. Rep. 175.

Rewards

The Supreme Judicial Court of Maine has just ruled, in *Mitchell* v. *Abbott*, 29 Atl. Rep. 1119, that when the offer of a reward is not acted on for twelve years, it will be presumed, in the absence of facts showing a contrary intent, that it has been revoked. This is in accord with the general rule. See an annotation on this subject in 1 AM. L. REG. & REV. (N. S.) 223.

Strikes

The reports of the past month are rich in additions to the legal history of strikes. Judge Grosscup, in his powerful charge to the Federal Grand Jury at Chicago, reported in *In re Charge to Grand Jury*, 62 Fed. Rep. 828, set the seal of his disapprobation on the action of the railroad strikers in no uncertain manner. In his opinion, the open and active opposition of a number of persons, as in that case, to the execution of the laws of the United States of so formidable a nature as to defy for the time being the authority of the government, constitutes an insurrection, even though not accompanied by bloodshed, and not of sufficient magnitude to render success probable. This is in harmony with the charge of Chief Justice PAXSON, of Pennsylvania, made under similar circumstances, at the time of the Homestead riots: *Homestead Case*, (Pa.) in 1 D. R. 785.

Similarly, the Circuit Court for the Southern District of Ohio, in *Thomas* v. *Cincinnati, N. O. & T. P. Ry. Co.*, 62 Fed. Rep. 803, has decided that a combination to incite all the railroad employés in the country to suddenly quit their service, without any dissatisfaction with the terms of their employment, thus paralyzing all railroad traffic, in order to starve the railroad companies and the public into compelling an owner of cars used in operating the roads to pay his employés more wages, they having no lawful right so to compel him, is an unlawful conspiracy by reason of its purpose, whether such purpose is effected by means usually lawful or otherwise.

Quite as severe a setback was given to the arrogance of the strikers, when the Circuit Court for the District of Washington, in *Booth* v. *Brown*, 62 Fed. Rep. 794, held, that when employés of a railroad join in a general strike, without grievance of their own, for the purpose of compelling, by obstruction of travel and hindrance of traffic, parties to one side of a pending controversy to yield actual or supposed rights, and leave the service under such circumstances as make it necessary to fill their places in order to continue the operation of the road, the court will not, by reason of their past services, direct the receivers to reinstate them.

Subrogation

The Court of Civil Appeals of Texas has recently decided one of the strangest questions that was ever raised in a court of law, by declaring, in *Williams* v. *Ford*, 27 S. W. Rep. 723, that by payment of the services and expenses of an officer in performing an official act, a person does not become subrogated to any right in the fees allowed such officer!

Telegraphs

According to a recent decision of the Court of Civil Appeals of Texas, it is not sufficient for a telegraph company, when the addressee of a telegram, not sent to the care of any one, is not at the place of address, to leave the telegram at that place, but reasonable diligence must be used to find him: *West Union Tel. Co.* v. *De Jarles*, 27 S. W. Rep. 792.

Torts

The Supreme Court of New York holds, that the rule that where the goods of an innocent person have been wrongfully mingled with the goods of another so that they cannot be separated, the whole bulk will be awarded to the innocent party, does not apply where the interests of third persons intervene, and full protection can otherwise be given to the innocent person whose goods were wrongfully used: *Nat. Park Bk. of New York* v. *Goddard*, 30 N. Y. Suppl. 417.

The Supreme Court of Alabama has lately ruled, in *Barn-*

hill v. *Howard*, 16 So. Rep. 1, that a collateral agreement that one of the vendors of a yoke of oxen should be hired by the vendee at a stipulated price per day, "to drive the team and have possession and control until they are paid for, and as long thereafter as they can agree," gives possession to such vendor as a driver only, and he cannot, on non-payment of the price, detain them from the vendee.

Vendor and Vendee